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10/785,434	02/24/2004	David Arthur Welch	WELCH 4	8500
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DUFT BORNSEN & FISHMAN, LLP			EXAMINER	
1526 SPRUCE STREET			KEEHN, RICHARD G	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/785,434	<b>Applicant(s)</b> WELCH, DAVID ARTHUR
	<b>Examiner</b> RICHARD G. KEEHN	<b>Art Unit</b> 2456

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 September 2010.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,5,6,8-11,15,16 and 18-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,5,6,8-11,15,16 and 18-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. **Claims 1, 5, 6, 8-11, 15, 16 and 18-20 have been examined and are pending.**
2. **Claims 2-4, 7, 12-14 and 17 are cancelled.**
3. **No new claims are presented.**
4. **Applicant's arguments are not persuasive. Accordingly, this Office action is made Final.**

***Response to Arguments***

5. Applicant's arguments, see pages 3-10, filed 9/23/2010, with respect to the rejection(s) of claim(s) 1, 5, 6, 8-11, 15, 16 and 18-20 under 35 U.S.C. 103(a) have been fully considered but are not persuasive.
  - a. On page 6 of the arguments, Applicant concedes that Bigus discloses the peer clients compiling metric performance data about the client and sending the data to a central server, which compiles performance of the clients as a whole. Examiner agrees to this point. Applicant argues that Bigus is a central based system, not a distributed system and alleges the invention is a distributed system. This is a bit misleading, for a critical component of Applicant's claimed invention is the central system's analysis of overall client performance, hence the claimed invention is not purely distributed since it relies so heavily upon central calculations and the report generated from the central source. Indeed about half of the limitations speak to centrality. The claimed invention is more of a hybrid, part centrally controlled, and part distributed to each client to perform its own

analysis and take its own corrective action. However, Bigus at [0030] discloses that the Bigus invention is not limited to a central embodiment, but also includes distributed systems as well. Paragraphs [0042 and 0045] also support embodiments beyond the exemplary.

b. With respect to the El-Fakih reference, Applicant focuses on the "client" being a "customer" when it is obvious that Examiner used the "service provider" embodiment. Also, Examiner did not rely on El-Fakih to disclose a peer communication device, but rather to disclose the concept that the performance information can be sent to a client to allow the client to perform its own analysis using the performance information, and then take corrective action to remedy and perceived problem or fault. This is what El-Fakih discloses as shown below. El-Fakih's client adjusts its communication settings based on performance information it received from a central source.

c. Therefore, while Bigus discloses the control system receiving peer communication device performance information collected by the peers and sent to the control system, then analyzes performance on both an individual peer level and as a collective group, then generates a report that can be used to correct perceived performance problems by an administrator, AND discloses that the invention can be distributed, it would be obvious to push down the individual performance analysis and corrective action taking to the individual clients themselves in a distributed environment. El-Fakih is relied upon to show receiving the group performance information, doing a self analysis with the

received group information, detecting a fault and correcting the fault. Therefore, the combination of references teaches the claimed invention.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**6. Claims 1, 8-11 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2005/0065753 A1 (Bigus et al.), and further in view of US 2002/0039352 A1 (El-Fakih et al.).**

As to Claims 1 and 11, Bigus et al. disclose a telecommunication system configured to provide distributed system monitoring, the telecommunication system comprising; and a method of operating a telecommunication system to provide distributed system monitoring, wherein the telecommunication system comprises a plurality of peer communication devices coupled to a control system, the method comprising the steps of:

a control system (Bigus et al. disclose the computer system and software - ¶ [0010]); and

a plurality of peer communication devices, where each peer communication device, responsive to handling telecommunications data, collects performance data and transfers the performance data to the control system (Bigus et al. disclose the peer

wireless communications devices responsive to handling telecommunications data - ¶¶ [0031 and 0059] collecting performance metrics and sending them to a central control system - ¶¶ [0010 and 0043]);

the control system, responsive to receipt of the performance data from the peer communication devices, processes the performance data from each of the peer communication devices to generate a performance file that indicates the performance of each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]);

processes the performance file to compare {a client's} performance to the performance of the other peer communication devices to detect a fault (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

Bigus et al. do not disclose and transfers the performance file to each of the communication devices; each of the communication devices, responsive to receipt of the performance file, detect a fault; and responsive to detection of the fault, at least one of the communication devices processes the performance file to identify at least one

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recovery action, and performs the at least one recovery action to attempt to cure the fault. However El-Fekih et al. disclose

and transfers the performance file to each of the communication devices (El-Fekih et al. disclose the client service provider receiving performance report - ¶ [0010]); and

each of the communication devices, responsive to receipt of the performance file, detect a fault (El-Fekih et al. disclose the client service provider taking corrective action based on analysis of the performance report - ¶ [0113]); and

responsive to detection of the fault, at least one of the communication devices processes the performance file to identify at least one recovery action, and performs the at least one recovery action to attempt to cure the fault (El-Fekih et al. disclose identification and performance of corrective action - ¶ [0113]).

It would have been obvious to one of ordinary skill in the art to combine and transfers the performance file to each of the communication devices; each of the communication devices, responsive to receipt of the performance file, detect a fault; and responsive to detection of the fault, at least one of the communication devices processes the performance file to identify at least one recovery action, and performs the at least one recovery action to attempt to cure the fault, taught by El-Fekih et al., with performance monitoring taught by Bigus et al., in order to ensure service quality (El-Fekih et al. - ¶ [0006]).

As to Claim 8, the combination of Bigus et al. and El-Fekih et al. discloses the telecommunications system of claim 1, wherein:

each of the peer communication devices periodically transfers the performance data to the control system (Bigus et al. disclose periodic transfer - ¶¶ [0043 and 0062]).

As to Claim 9, the combination of Bigus et al. and El-Fekih et al. discloses the telecommunications system of claim 1

wherein the performance data includes a performance grade for each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition}, grades of "red", "yellow" and "green" and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

As to Claim 10, the combination of Bigus et al. and El-Fekih et al. discloses the telecommunications system of claim 1

wherein the performance file includes a list of performance data for each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

As to Claim 18, the combination of Bigus et al. and El-Fekih et al. discloses the method of claim 11 wherein the step of transferring the performance data from each of the peer communication devices to the control system comprises the step of:

periodically transferring the performance data from each of the peer communication devices to the control system (Bigus et al. disclose periodic transfer - ¶¶ [0043 and 0062]).

As to Claim 19, the combination of Bigus et al. and El-Fekih et al. discloses the method of claim 11

wherein the performance data includes a performance grade for each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including fault status {red light condition}, grades of "red", "yellow" and "green" and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

As to Claim 20, the combination of Bigus et al. and El-Fekih et al. discloses the method of claim 11

wherein the performance file includes a list of performance data for each of the peer communication devices (Bigus et al. disclose, responsive to receiving individual client performance metrics, analysis of said metrics and generation of reports including

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fault status {red light condition} and data in numeric reports, indicating both client performance as a function of overall system performance, and overall system performance itself - ¶¶ [0053-0055 and 0063-0066]).

**7. Claims 5, 6, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Bigus et al. and El-Fekih et al., and further in view of US 2004/0153823 A1 (Ansari).**

As to Claims 5 and 15, the combination of Bigus et al. and El-Fekih et al. discloses the telecommunications system of claim 1, and the method of claim 11 wherein the at least one peer communication device [...] by the at least one recovery action, [...] by the at least one recovery action (El-Fekih et al. disclose identification and performance of corrective action - ¶ [0113]; Bigus et al. disclose the peer wireless communications devices responsive to handling telecommunications data - ¶¶ [0031 and 0059]).

The combination if Bigus et al. and El-Fekih et al. does not disclose wherein the device determines if the fault is cured, and generates a report of the fault if the fault is not cured, and transfers the report of the fault to the control system. However, Ansari discloses

wherein the device determines if the fault is cured, and generates a report of the fault if the fault is not cured, and transfers the report of the fault to the control system

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(Ansari discloses determining if a fault is cured or not, generating a report and transferring the report to a control system - ¶¶ [0027-0029]).

It would have been obvious to one of ordinary skill in the art to combine wherein the device determines if the fault is cured, and generates a report of the fault if the fault is not cured, and transfers the report of the fault to the control system, taught by Ansari, with performance monitoring taught by the combination of Bigus et al. and El-Fekih et al., in order to provide diagnosis and assistance with self-healing in performance-monitored systems (Ansari - ¶ [0004]).

As to Claims 6 and 16, the combination of Bigus et al., El-Fekih et al. and Ansari discloses the telecommunications system of claim 5 the method of claim 15

wherein the control system, responsive to receipt of the report of the fault, identifies at least one recovery action, and performs the at least recovery action on the at least one peer communication device (Bigus et al. disclose the peer wireless communications devices responsive to handling telecommunications data - ¶¶ [0031 and 0059]; Ansari discloses wherein the control system, responsive to receipt of the report of the fault, identifies at least one recovery action - ¶¶ [0027 and 0029]; and performs the at least recovery action on the at least one device - ¶ [0004]).

The motivation and obviousness arguments are the same as in Claim 5.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RICHARD G. KEEHN whose telephone number is (571)270-5007. The examiner can normally be reached on Monday through Thursday, 9am - 8pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rupal D. Dharia/  
Supervisory Patent Examiner, Art  
Unit 2400

RGK